THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0398, Richard Maynard & a. v. Robert Rice, the court on July 28, 2005, issued the following order:

The defendant, Robert Rice, appeals an order of the Manchester District Court awarding damages to the plaintiffs, Richard and Anya Maynard, for denying them access to their belongings. We reverse.

The plaintiffs leased an apartment from the defendant. On May 1, 2003, a fire in the building caused substantial damage and left the plaintiffs' apartment uninhabitable. On May 9, 2003, the defendant gave the plaintiffs notice that work would begin on May 16 to repair the damage, that all personal items were to be removed before that date, and that the lease was terminated pursuant to the "Fire" section of the lease. During the next two weeks, the plaintiffs removed most of their personal property from their apartment. On May 26, before the plaintiffs had finished removing all of their personal property, the defendant changed the locks on the building, the effect of which was to deny the plaintiffs access to the apartment. The plaintiffs sued the defendant for damages for violations of RSA 540-A:2 and RSA 540-A:3, III.

The trial court concluded that under the lease, the tenancy did not terminate until the end of May. Because the tenants were denied access to their belongings in the apartment after the locks were changed on May 26, the court awarded damages of $6,000, consisting of $1,000 per day from May 26 to May 31. See RSA 540-A:4, IX; RSA 358-A:10. Thereafter, the court granted the plaintiffs' motion for taxation of costs, interest and attorney's fees.

The defendant argues that he did not act willfully. See RSA 540-A: 3, III (no landlord shall willfully deny tenant access to tenant's property); cf. RSA 540-A:2 (landlord shall not willfully attempt to circumvent lawful procedures for eviction). "A willful act is a voluntary act committed with an intent to cause its results. It is not, by contrast, an accident or an act committed on the basis of a mistake of fact." Miller v. Slania Enters., 150 N.H. 655, 662 (2004) (quotation omitted).

The trial court made no finding either that the defendant acted willfully or that he did not act on the basis of a mistake of fact. The court did state that it did not find that the plaintiffs told the defendant that they were vacating as of May 24, 2003. This statement of the court simply indicates that the trial court may have found that the defendant did not have a correct belief that the

plaintiffs vacated the apartment on May 24 – it is of little value, however, in determining whether the defendant acted under a mistaken belief that the plaintiffs vacated the apartment that day.

After reviewing the record, and in light of the specific findings of fact that the trial court did make, we conclude that the evidence compels a finding that the defendant acted on the basis of a mistake of fact. The defendant testified that it was his understanding that the plaintiffs had taken all of the personal property that they wanted to take by May 24. Plaintiff Richard Maynard testified that he told the defendant that he "had virtually finished everything that I had to do." The defendant similarly testified that Maynard told him on May 24 that he "was almost done moving out." After this statement was made, the defendant left the area, leaving Maynard on the premises. Although Maynard testified that the building was locked and he was unable to enter on May 24, the trial court specifically found that the defendant did not change the locks until May 26. That finding compels the conclusion that the plaintiffs had the opportunity to remove any remaining personal property in the apartment on May 24. Furthermore, in a letter dated June 18, 2003, Maynard stated that the defendant had told him on May 15 to "leave anything that had to be thrown out" as the defendant had to have all interior sheet rock removed. The defendant testified that what was left in the apartment as of May 24 was essentially fire-damaged items. It is undisputed that the apartment was uninhabitable after the fire throughout the month of May.

Thus, considered in light of the trial court's factual finding that the defendant did not change the locks until May 26, there is compelling evidence that the defendant acted in the mistaken belief that the plaintiffs had removed whatever remaining personal property they wanted to keep both prior to May 24, and on May 24 after the defendant had left the premises. While the plaintiffs argue that it was unreasonable for the defendant to believe that the plaintiffs had vacated because they still had personal property in the apartment when the defendant changed the locks, the plaintiffs introduced evidence acknowledging that the defendant had invited them to leave in the apartment anything that they wanted thrown out. Thus, it was clearly reasonable for the defendant to believe, albeit mistakenly, that the plaintiffs wanted him to dispose of the fire-damaged property remaining in the apartment after May 24. Finally, it is undisputed that all parties knew that the plaintiffs had no intention of actually living in the uninhabitable apartment at any time during the month of May following the fire.

We conclude that, as a matter of law, when viewed in light of the trial court's specific factual findings, the record compels the conclusion that the defendant acted on the basis of a mistake of fact. Accordingly, the defendant did not willfully violate the plaintiffs' rights under RSA 540-A:2 or :3, and the trial court therefore erred by awarding judgment for the plaintiffs. See Miller v. Slania Enters., 150 N.H. at 662.

Because we have reversed the judgment for the plaintiffs, we also reverse the award of costs, interest and attorney's fees to the plaintiffs.

Reversed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk